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Queer Law Cases

N<sup>o</sup> 5.

The Run That Could not be found

Richardson v White

1891

The queer law case with which I shall deal to  
night is one illustrating the difficulty  
~~in the~~ of identifying a piece of land  
described in an official survey without  
any reference to natural or artificial  
boundaries. The case in question arose  
in connection with the sale of a  
run called "Livia" which was  
supposed by all concerned to be in  
Queensland. None of them however  
could find it. If it had any existence  
it was probably somewhere in the  
Northern Territory.  
A similar state of affairs could rarely  
arise in places where all the natural  
boundaries, natural and artificial  
had been ~~lost~~ destroyed or had  
never been defined.

LIVIA



The former was the case in ancient Egypt.  
The waters of the Nile overflowing the  
shores of the Delta and depositing a  
thick layer of silt, destroyed every vestige  
of the true boundaries. The ingenuity of  
the wonderful people of lower Egypt, thousands  
of years ago <sup>found out</sup> developed a system for  
determining the real spot under the  
silt where the a particular farm or  
piece of land lay. Modern Surveying  
is largely a development of this ancient  
system, & was introduced into New South  
Wales in 1789. Then the Surveyor General's  
Department was instituted. The early  
surveyors were better off than the "land meters" <sup>METER</sup>  
of ancient Egypt because they had <sup>better</sup> ~~some~~ ~~time~~ ~~there~~  
~~than when they came that and had~~  
known boundaries, to aid them. As the  
Royal occupation  
process of survey was pushed further and further

instruments and  
more data

1  
affixed Run were described by Natural Boundaries  
in a rough and ready way. These boundaries  
afforded some help to the surveyors but mistakes  
were made and some of the most interesting  
of our law cases are concerned with boundaries  
and the identification of the actual land  
on the surface of the country with the  
description of it in Crown Grants and  
other official documents and plans.

This is as might be expected when the  
distance from the coast and from civilization  
the climate and the condition of the  
surface of Eastern Queensland are  
considered. There are vast plains  
covered with stunted vegetation and  
desolate mountain ranges.

There are rivers, it is true but  
they only flow in time of flood. When



a depression, hardly noticed in dry weather, becomes a ~~swimsable~~ deep sheet of water extending for many miles. The South Arabian Survey

party employed on the Border Survey camped one night on a perfectly dry flat. Suddenly <sup>water</sup> ~~being rain~~ came, and before they could move to higher ground they were caught by <sup>a</sup> the flood.

Their camels, always stupid and terrified by water, refused to move even when the men dived down and torn off their hobbles. They stood still until the rising water drowned them. An accident such as this is always possible when the water courses are ill defined, and even the main watersheds can be crossed without

down from  
sams which  
tell a hundred  
miles away

being noticed. Run a survey line <sup>a</sup> ~~to~~ <sup>to the fourth Australian</sup> ~~and~~ <sup>border</sup>  
few hundred miles due west ~~and~~  
in these conditions, and it requires  
very carefully conducted checks  
measurements to ascertain exactly  
where the line ends.

According to ~~the~~ Acts of Parliament and  
Letters Patent, the line would have  
ended at the 141<sup>st</sup> Meridian west  
of Greenwich up to the year 1863,  
in that year however the western  
boundary of Queensland north of the  
20<sup>th</sup> Parallel of Latitude was  
extended westward to the 138<sup>th</sup>  
Meridian.

But where exactly on the earth's  
surface were the 141<sup>st</sup> and the  
138<sup>th</sup> Meridians?



These questions could be determined  
only by astronomical observation, and  
Electric Time signals and agreement  
between the States interested in the boundary.  
As the outcome of a dispute between  
South Australia and Victoria concerning  
The exact location <sup>of the 141<sup>st</sup> Meridian</sup> ending in Ullyaterr  
~~and~~ which was carried to the  
Privy Council, the ~~141<sup>st</sup>~~ boundary  
between the two States has been fixed.  
But this does not accord with the  
boundary between South Australia  
and New South Wales. Though both  
boundaries are ~~now~~ off were originally  
laid down on the 141<sup>st</sup> Meridian.  
The boundary between North  
Australia <sup>and Queensland</sup> ~~was~~ <sup>has been</sup> fixed without any  
dispute having arisen, and the

The boundary between South Australia  
and Queensland has now been  
fixed, and the two meridians  
located on the earth's surface

But before this was actually  
done the Surveyor General of  
Queensland caused the country  
up to the South Australian border  
to be surveyed into runs for  
pastoral purposes. These runs were  
shown on plans and were  
given names. One of them was  
called Livra; another Alpha  
Some time previous to May 1882. a Mr  
White applied for and obtained  
a license to occupy Livra. Such



was described as commencing at  
a marked tree on the Buckley  
the starting point of Alpha  
was described as & lying  
between Alpha and the  
South Australian border. Commencing  
at a marked tree on the Buckley River  
with water and boundary ~~described~~ <sup>set out</sup>  
with reference to this marked tree which  
was at the starting point of Alpha  
in May 1882. Mr White sold his interest  
in Livia to Richardson for £1000 which  
Richardson paid a few days later  
and the Livia was transferred to  
him. Shortly afterwards  
Richardson heard that the Government  
surveyor on the Buckley River



had received instructions, to  
survey alpha, starting from  
The South Australian border.  
This <sup>would</sup> put Livra out of existence.  
He thereupon gave white notice  
that the purchase money of  
Livra would must be refunded,  
as it would not exist. Since  
that of Alpha was measured.  
White stated that Richardson  
was premature in saying that  
Livra had no existence, & that  
the Government would not dispute  
their <sup>to occupy it</sup> because. He advised  
Richardson to apply in the case  
and may seek to prevent  
forfeiture, and added that  
he could not move in the matter.



as the run had been transferred.  
While one Richardson then  
applied to the Lands & Survey  
Department ~~which~~ the officials  
of which took up the position  
that until the boundary of  
the Colony had been determined  
they could not say whether  
if LIVIA existed or not.  
Alpha was then surveyed  
and an amended description  
of it was published in  
The Gazette on 3rd Nov. 1883.  
This however made no reference  
to the south Australian border  
and certainly did not  
show that Livia was had

disappeared.

So Trump dropped in until  
May, 1885, when Richardson  
wrote to White to stir him  
up about repagment, and  
~~White after office~~ <sup>urged</sup> that he  
White appears to have <sup>awaited</sup>  
the decision of the survey of the  
Black Quarter for years, dropped  
in until in February 1889  
when the Land Department  
~~did~~ gave notice that line  
described as being west of  
alpha was by survey  
found to be in South Australia  
and the south lines and were to be  
rebounded to Richardson.



The first thing that seems queer about  
this case is that any one should  
have put money into such a place  
as "Livra" right out almost in central  
Australia in unsurveyed country  
about which no one seemed to  
know anything.

But this can be explained.

Landsborough had discovered the  
gold in 1881 and settlement  
followed. In several years stations  
counted along the 138° border  
between South Australia and  
Queensland, until there came  
the depression of 1888 when they  
were abandoned.

Ten years  
later, the Queensland Government  
sent an expedition up the Mulligan  
and Ferguson Rivers and this  
led to fresh interest in the  
District which was known as the North



Gregory.

There was a bigger pastoral rush to  
the west, including the districts  
of Gregory, North and South, than  
had ever then taken place in  
the history of Queensland, and  
the new comers were favoured with  
good seasons - February 1878  
brought splendid rains to  
all parts of Queensland.  
The "seventies" <sup>were</sup> ~~was~~ said to be  
the lucky decade for the  
squatters & those ~~so~~ <sup>of</sup> past days.  
1879 was another good year;  
in 1881 there were in the Mitchell  
electorate alone nearly six  
million sheep and the future of.



Western Queensland seemed  
assured. To all that was  
needed was a railway to the  
Gulf. and this was thought  
to be ~~a certainty~~ assured.

That account for the taking  
up of "Livia" and its subsequent  
sale, <sup>and it was not Western Queensland</sup> only which attracted investment &  
But another ~~year~~ <sup>year</sup> Queensland arose

If \* Livia was worth £1000 in  
its unimproved state and  
prospects were so good why  
was nothing done for several  
years to ~~settle~~ <sup>find</sup> it  
take 7 years to find out that  
it did not exist with £1000 lying  
idle and rent to pay all the  
time?

There may have been other reasons,

\* The South  
Australian  
Government  
put up to  
action to  
clear 7"  
large tract  
of country  
on the side  
of the border  
and obtained  
very high prices  
for it

but there were two in particular  
First the severe changes in  
the water and from 1880  
onward there was a series of  
years of drought. And the expected  
railway never came.  
Drover followed. The drought did  
not break and in 1892  
Carandotta the great station in the  
Georgina lost 90000 sheep and  
10000 cattle. The owners were  
ruined. He losing a quarter of  
a million pounds. They had  
borrowed £84 from the Bank of New  
South Wales and Carandotta was  
sold to Kidman.

Secondly The Lands & Survey office  
did nothing because they were  
disentitled the result of the survey



Check

of the boundary which was on  
the basis of the South Australia  
Surveyors; and soon after it  
was completed, the Queensland  
authorities were not satisfied  
In 1885 they sent out Staff  
Surveyor Twissden Bedford to  
run a line from Cardwell to the South  
Australian Boundary with  
instructions to measure the distance  
between the Telegraph Station at Boulton  
and the ~~border~~ and any point  
on the Western Boundary of Queensland  
defined by the South Australian

Government and for ascertaining  
to what degree of accuracy the survey  
along the 138<sup>th</sup> Meridian had been  
carried out by electric time signal



Mr Bedford reached Bourke in August  
1885 <sup>he</sup> ~~and~~ pushed his work 11  
months later, ~~red~~ and was recalled  
to Brisbane, which place he  
reached in August 1886.

His line from Bourke to the Border  
was a course perfectly straight  
and so impressed one of the  
blacks who said to his master  
"by word, Marmey, all the  
same crow." meaning of course  
straight as the crow flies.  
Mr Bedford experienced the extraordinary  
change in the climate and vegetation  
and condition of stock  
in drought and then rain fall,  
He embodied his observations of the  
Country in an address to the  
Royal Geographical Society.



In August 1886 Richardson's agents  
who were pressing the Department  
for an answer one way or the  
other, were informed officially  
that no action could be taken  
till Mr. Surveyor Bedford's plans  
of survey and field notes, reached  
the office.

It was not until 12<sup>th</sup> March 1889  
that the Department had informed the  
Richardson's agents that there  
did not appear to be any country  
in Livid.

Richardson then made a formal  
demand for the return of the  
£1000 and, failing to get it, he  
issued a writ against White on  
27<sup>th</sup> February 1890. Claiming



repayment of £1000 paid in the non-existent  
dividend, with interest from June 1882, or,  
in the alternative £1500 damages.

He alleges that the consideration for  
the payment had failed and that  
he had been induced to make it  
by Suter's representation that Luria  
existed and could be pointed out  
to him <sup>namely</sup> ~~that~~ <sup>that he had acted in perfect</sup>  
Suter's defence ~~was~~ <sup>good faith</sup> ~~that he had~~ <sup>that he had</sup>  
~~acted~~ <sup>that</sup> Richardson's <sup>cause of action</sup> <sup>had arisen shortly after November</sup>  
1885 when he had notice of the non-  
existence of the firm, and as his  
action was not begun within six years  
of that date, it was barred by  
the Statute of Limitations.



The action was tried in Brisbane  
in April 1891 before Mr Justice  
Harding and a jury. Have been  
The jury found the facts as stated  
but they also found that White  
made us false representations,  
which were false, or without good  
cause to believe them to be true,  
They also found that Richardson  
did not discover the representations  
were false until 12<sup>th</sup> March 1889  
that he had no means of doing so  
and that he could not by the  
exercise of reasonable diligence  
have done so before. Mr Justice  
Harding entered judgment for Richardson.

White appealed with a view to obtaining  
the entry of a judgment in his favour.

The appeal was heard by the Full  
Court in June 1891. Sir Samuel Proctor  
then Attorney General, Mr. and Messrs  
C. M. Lyle and W. F. Wilson appeared for  
Richardson, T. F. Byrnes, S. G. and  
Arthur Peck for the White.

Appearing?

then Solicitor General



In the course of a very able argument, Sir Samuel Griffith contended that the negroes of this peculiar case were inherently not white.

Both parties knew that the license to LIVIA was issued under the Portugal lease. Act. The run was in country almost unexplored. It was unswayed and license were void. to all nations.

In case of dispute there was a special tribunal to decide it. Sir Francis was white & Richardson was an orphan. While <sup>alone</sup> and ~~apart~~ <sup>alone</sup> he had agreed to do. If Richardson had got a bad little that gave him no right to get his money back.

He could not rescind the contract. In this particular could not be restored to their original position since the run was gone. As regards the defense that the action was brought too late. Richardson must have known in June 1882 of the great uncertainty regarding Livia and more than 6 years had elapsed before he moved his writ.

But the Full Court (Lilley C.J. Harding  
and Deane J.J.) said that the  
enjoyment in Richardson's favour  
for the £1000 must stand though  
it must be taxed by reducing the  
interest which could run only from  
12<sup>th</sup> March 1889. Then Richardson  
made his demand.

The case might be shortly stated thus -  
and without fraud or concealment  
on White's part, and without  
negligence or loss & ripeness on Richardson's  
part, but with entire ignorance on  
the part of both of them, the subject  
matter of their bargain, did not  
really exist. (Which they both  
honestly believed did exist)

Therefore there was never any  
consideration for the payment or the  
receipt of the £1000.



The Court could not suffer the Defendants<sup>a</sup>  
to run away with the money, paid  
in consideration of the sale of an  
estate to which he had no right.  
It could not however be said  
that White had no right to  
hold the money until the  
Government had formally  
determined that Davis did  
not exist. Then and only then, the duty  
to return arose.  
There was no fraud and no  
deceit in making the contract  
and Richardson could hardly  
claim that he was damaged  
until the mistake was made  
to appear, and the purchase money  
then withheld from him.

the Right & the relief. (12<sup>th</sup> March 1889)  
must be taken <sup>with reference to the</sup> ~~to be the~~ ~~fixed~~ date.  
The judgment was therefore affirmed  
at 100 as to the interest which  
was ordered to be computed at  
8 per cent from 12<sup>th</sup> March  
1889.

And so ended after running its  
course for nine years, this  
very queer case.

The man was lost for ever, whether  
it became merged in Alpha  
or was pushed out by Alpha  
over the border into South Australia  
will never be determined —